



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 9, 2004

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2004-2883

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199057.

The Teacher Retirement System of Texas (the "system") received a request for the "HMO health plan submission to TRS Active care" made by three specified business entities. Although you defer to the interested third parties who may have a proprietary interest in the requested information to raise arguments for withholding the information, you state that the submitted information may be subject to third party confidentiality claims. Pursuant to section 552.305(d) of the Government Code, the system notified the interested third parties, Mercy Health Plans ("Mercy"), SHA, L.L.C. d.b.a. FIRSTCARE ("FirstCare"), and Scott & White Health Plan ("Scott & White"), of the system's receipt of the request and of each company's right to submit arguments to us as to why any portion of the submitted information relating to each company should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). As responsive to the request, the system submitted to us for review a proposal submitted by Mercy to the system on December 16, 2002, a proposal submitted by FirstCare to the system titled "FY 2004," and a proposal submitted by Scott & White to the system titled "Request For Proposal FY 9/1/2003 Thru

8/31/2004.” We have considered arguments submitted by Scott & White and have reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, neither Mercy nor FirstCare has submitted comments to us explaining why any portion of the submitted information relating to it should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate Mercy’s or FirstCare’s proprietary interests. *See, e.g.*, Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the system may not withhold any portion of the submitted information pertaining to Mercy or FirstCare on the basis of any proprietary interest that each company may have in the information.

Next, we note that Scott & White asserts that portions of its response to “TRS’ 2004 RFP” are excepted from disclosure under section 552.110 of the Government Code. In making this assertion, Scott & White attached the portions of its response to “TRS’ 2004 RFP” that it claims are so excepted from disclosure.¹ However, Scott & White did not submit any comments to us stating the reasons why any exception to disclosure applies to the information submitted to us by the system. Thus, we have no basis on which to conclude that the information submitted to us by the system regarding Scott & White is excepted from disclosure under the Act. Accordingly, we conclude that the system may not withhold any portion of the submitted information pertaining to Scott & White on the basis of any proprietary interest that Scott & White may have in the information.

However, we note that social security numbers that are contained within Scott & White’s information may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law.² The 1990 amendments to the federal Social Security

¹ We note that we did not receive from the system for review any portion of the information that Scott & White claims to be excepted from disclosure. Accordingly, this ruling does not address the public nature of those particular documents or any claims made by Scott & White with respect to those documents to the extent that they exist. Rather, this ruling only addresses the information submitted to us by the system as part of its request for decision.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov’t Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The system has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the system, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the system should ensure that they were not obtained and are not maintained by the system pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that a portion of the remaining submitted information pertaining to FirstCare is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making such copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, social security numbers that are contained within Scott & White's information may be confidential under federal law. The system must release the remaining submitted information to the requestor. However, in doing so, the system must comply with the applicable copyright law in releasing the copyrighted information that is contained within FirstCare's information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

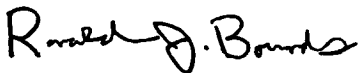
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 199057

Enc. Submitted documents

c: Ms. Julia M. Stout
Director of Sales & Marketing
Legacy Health Plan
2018 Pulliam
San Angelo, Texas 76905
(w/o enclosures)

Mr. William A. Bennett
Mercy Health Plans
40 Corporate Center
425 South Woods Mill Road
Chesterfield, Missouri 63017-3492
(w/o enclosures)

Ms. Cheryl Gattis
Senior National Account Executive
SHA, L.L.C. d.b.a. FIRSTCARE
12940 N. Highway 183
Austin, Texas 78750
(w/o enclosures)

Mr. Henry D. Eckert
Executive Director
Scott & White Health Plan
2401 South 31st Street
Temple, Texas 76508
(w/o enclosures)

Mr. Blake O. Brodersen
Assistant General Counsel of Regulatory Affairs
Scott & White Health Plan
2401 South 31st Street
Temple, Texas 76508
(w/o enclosures)